

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LOUIS STRYKER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 165,957
<b>CASTLEGATE INDUSTRIES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>UNITED STATES FIDELITY &amp; GUARANTY CO.</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The above matter comes on before the Workers Compensation Appeals Board upon remand from the Kansas Court of Appeals. The original Appeals Board decision granted claimant an award based upon a 49 percent work disability in accordance with Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990) and K.S.A. 1991 Supp. 44-510e. The matter was appealed to the Kansas Court of Appeals which, in its unpublished decision of May 2, 1997, affirmed in part, reversed in part, and remanded for further hearings to the Appeals Board.

**ISSUES**

What is the nature and extent of claimant's injury and disability resulting from the injury suffered on January 13, 1992?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court of Appeals remanded this matter to the Appeals Board finding that the Appeals Board had failed to consider work disability evidence from respondent's vocational rehabilitation counselor, Mr. Doug Lindahl. The Appeals Board's Order stated that the only evidence presented in the record as to work disability was that of Karen Sherwood

indicating that the Appeals Board had failed to consider Mr. Lindahl's deposition and report.

The Appeals Board after considering the entire record finds as follows:

Karen Sherwood found claimant had suffered a 50 percent loss of access to the open labor market and a wage loss in the range of from 42 to 55 percent based upon an estimated wage-earning ability of \$170 to \$222 per week. Doug Lindahl found that claimant had suffered a 39 percent loss of access to the open labor market based upon the restrictions of Dr. David L. Black and a 33 percent loss of access based upon the restrictions of Dr. John J. Wertzberger. He opined claimant had suffered a 22 to 49 percent loss of ability to earn comparable wages based upon an estimated wage-earning ability of \$200 to \$305.60 per week. Both opinions properly used \$392.90 as the average weekly wage on the date of injury.

Claimant argues that respondent's expert's opinion is defective for a variety of reasons. Respondent argues that claimant's expert's opinion is defective for a number of reasons. The Appeals Board finds neither opinion to be perfect but both are within a reasonable degree of certainty based upon the evidence and information provided and based upon the expertise of the witnesses.

Respondent argues that claimant's wage-earning ability should be decided based upon his earnings with Cussimano Construction. Respondent alleges that claimant showed an ability to earn \$232.73 to \$365.71 per week based upon Cussimano Exhibit 1. A review of Exhibit 1 indicates that the numbers provided by respondent represent biweekly pay rather than weekly pay. This would indicate claimant's earnings with Cussimano ranged from \$116.37 to \$182.86 per week rather than that represented by respondent. The Appeals Board finds the opinions of Ms. Sherwood and Mr. Lindahl represent a more accurate range of claimant's ability to earn post-injury wages.

In considering the opinions of both claimant's and respondent's experts, the Appeals Board finds claimant has suffered a loss of access to the open labor market of 43 percent and a loss of ability to earn comparable wages of 31.5 percent. In considering both factors as is required by K.S.A. 1991 Supp. 44-510e, the Appeals Board finds claimant has suffered an overall work disability of 37.25 percent.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the previous Order of the Workers Compensation Appeals Board is hereby modified and an award of compensation is hereby granted in favor of the claimant, Louis Stryker, and against the respondent, Castlegate Industries, Inc., and its insurance carrier, United States Fidelity & Guaranty Company, based upon an average weekly wage of \$392.90 for an injury occurring on January 13, 1992, for 24.43 weeks temporary total disability

compensation at the rate of \$261.95 for a total of \$6,399.44, followed thereafter by 390.57 weeks at the rate of \$97.58 per week in the amount of \$38,111.82 for a 37.25% permanent partial work disability, for a total award of \$44,511.26.

As of March 18, 1998, there would be due and owing 24.43 weeks temporary total disability compensation at the rate of \$261.95 in the sum of \$6,399.44, followed thereafter by 297.71 weeks permanent partial disability compensation at the rate of \$97.58 per week totaling \$29,050.54, for a total due and owing of \$35,449.98, which ordered paid in one lump sum minus amounts previously paid. Thereafter claimant is entitled to 92.86 weeks permanent partial disability compensation at the rate of \$97.58 per week totaling \$9,061.28 until fully paid or until further order of the Director.

In all other regards, the Order of the Appeals Board of December 19, 1995, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1998.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS  
Stephen B. Angermayer, Pittsburg, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director